

House Ways & Means, by invitation from the Democrat Members

Hearing on the “Trans-Pacific Partnership Environment Chapter”

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Introduction

Ranking Member Levin and honorable members of the Ways & Means Committee, thank you for this opportunity to share my views with you on the Trans-Pacific Partnership (TPP) environment chapter.

The TPP Environment Chapter

The TPP environment chapter is a good chapter that warrants support. As with all parts of the TPP, consideration needs to be given to the merits of the chapter as well as towards the overall agreement.

It is also the case when assessing the TPP environment chapter to keep in mind the living nature of this agreement. This is not an empty platitude. The TPP includes a range of mechanisms such as mandated reviews, regular meetings of officials and commitments by each TPP government to transparency in their regulatory making process.

This provides a range of opportunities to shape behavior and outcomes over time.

The underlying point being that when considering TPP environment chapter, don't let the perfect be the enemy of the good. The U.S. is clearly better off with the TPP environment than without it.

The TPP and Multilateral Environmental Agreements (MEAs)

Regarding specific elements of the TPP environment chapter, there is some concern that the TPP does not fully reflect that part of the May 10th Bipartisan agreement which require FTA parties to “adopt, maintain and implement” a list of seven MEA.

Yet, for many of the environmental issues addressed in these MEAs, the TPP often goes further. For example, the Ramsar agreement on wetlands is weak in terms of commitments. While the TPP does specifically refer to the Ramsar it does require countries to “take appropriate measures to protect and conserve wild fauna and flora...including measures to conserve the ecological integrity of specially protected natural areas, including wetlands.” Here, the TPP require action to protect wetlands that are stronger than in Ramsar and extends this to other areas that could include tropical reefs and glaciers.

Similar conclusions can be reached with respect to the CCAMLR Convention and the IATTC convention – both which are not specifically mentioned in the TPP - but given that only about half the TPP countries party to these treaties - the TPP includes language that extends these commitments beyond what currently exists.

The TPP and Climate Change

The TPP environment chapter does not mention climate change. This does not mean however that the TPP does not include commitments that are good for the climate.

There are a number of ways that trade agreements can be used to address the climate challenge. One way is to eliminate tariffs on climate technologies, thereby reducing the cost to governments and businesses of reducing their greenhouse gas emissions. The U.S.-led environmental goods agreement negotiations seek to do just that.

Because the TPP reduces most tariffs on all goods to zero over time, the TPP will increase access to climate change technologies.

The TPP will also addresses non-tariff barriers, including those applying to climate change goods and services.

Investor-State Dispute Settlement (ISDS)

Finally, I want to say something about concerns that foreign investors will use the TPP’s ISDS mechanism to challenge US environmental laws.

Cases typically cited as evidence of this outcome are not in fact challenges to environmental laws but are instead challenges to how the law was designed and applied – they are issues of due process. For example, the 2015 NAFTA decision in *Bilcon v. Canada* could be seen as an example of a U.S. investor

successfully using ISDS to overturn a Canadian government decision not to allow mining for environmental reasons.

Bilcon was not in any way challenging Canada's environmental law or regulation. The claim by Bilcon was that they were entitled to a decision based on the expectation that the law in force as written and customarily interpreted would be applied to the investment proposal.

This did not happen in that case. Instead, the environmental review panel applied a standard of "community values" to find that the proposed investment failed the environmental test. Nowhere in Canada's domestic law or constitution is there such a standard or concept as "community values".

This is what ISDS is meant to achieve, to provide international review of miscarriages of justice. Just imagine how important such protection is for US investors in countries with less sophisticated legal systems than Canada. This is a good example of how ISDS can strengthen democratic processes by limiting the capacity of special interests to bend the political process in their favor.

Thank you and I look forward to your questions